



WASHINGTON STATE DEPARTMENT OF  
**Natural Resources**  
Doug Sutherland - Commissioner of Public Lands

Bonnie Bunning, Executive Director

## REPORT OF AUCTION OF STATE LANDS

Application No. 02-077864

Name of Sale: Rotha Road Public Auction

Benton County

PRINT NAME OF SUCCESSFUL BIDDER(S) (This will be the name(s) to appear on the deed unless otherwise instructed in writing)

ADDRESS OF PURCHASER:

PHONE:

FAX:

DESCRIPTION OF LAND:

See attached Memorandum of Auction of Real Estate.

MINIMUM ACCEPTABLE BID:

\$ 23,000.00

SUCCESSFUL BID:

\$ \_\_\_\_\_

BID DEPOSIT:

\$ 7,000.00

TERMS OF SALE ARE SET FORTH IN THIS REPORT OF AUCTION AND THE ATTACHED MEMORANDUM OF AUCTION.

**DISCLAIMER:** STATE DOES NOT REPRESENT AND SPECIFICALLY DISCLAIMS ANY WARRANTIES REGARDING THE ACREAGE, TIMBER PRESENT, OR VALUE OF THE PROPERTY. PURCHASER SHALL NOT RELY ON ANY REPRESENTATION BY STATE INCLUDING THOSE RELATING TO ACREAGE ESTIMATES, VOLUME QUALITY OR GRADE OF TIMBER, APPRAISAL INFORMATION OR PRE-BID DOCUMENTATION. PURCHASER HAS HAD AN OPPORTUNITY TO SEEK LEGAL COUNSEL ON THE LEGAL EFFECT OF THIS SALE.

WITNESS this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

I hereby agree to the terms set forth in this report and attached memorandum of auction.

\_\_\_\_\_  
PURCHASER/Agent

\_\_\_\_\_  
PURCHASER/Agent

I hereby certify that the above and foregoing is a full, true and correct report of the auction of lands described above, containing description, price and other information, held on the 13th day of July, 2006, beginning at 1:30 p.m. Purchaser's bid has been accepted as the successful bid subject to confirmation as provided by RCW 79.11.175.

AUCTIONEER

\_\_\_\_\_  
Pamela Plancich, Auctioneer

**STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES  
Doug Sutherland, Commissioner of Public Lands**

**MEMORANDUM OF AUCTION OF REAL ESTATE**

THIS AGREEMENT is made as of the date set forth in the Report of Auction by and between the State of Washington, acting by and through the Department of Natural Resources ("State") and the successful bidder ("Purchaser").

WHEREAS, State is the owner of certain real property known as Rotha Road located in Benton County, Washington; and

WHEREAS, Purchaser was the successful bidder at the auction held this date;

NOW, THEREFORE, in exchange for the mutual promises and covenants herein contained, and other good and valuable consideration, the mutual receipt and sufficiency of which is hereby acknowledged by Purchaser and State, it is agreed as follows:

**SECTION 1 PROPERTY**

**1.1 Property to be Sold.** State has sold and will convey to Purchaser, and Purchaser shall accept from State, subject to the terms of this Agreement, that certain real property located in Benton County, Washington, the legal description of which is set forth on Exhibit A, together with all easements, rights-of-way and other rights appurtenant to said real property. The foregoing property and rights and interests described above are collectively referred to herein as the "Property."

**1.2 Reservation.** This sale is subject to the reservation of oils, gases, and minerals as prescribed in RCW 79.11.210.

**SECTION 2 PAYMENT**

**2.1 Purchase Price.** The purchaser price ("Purchase Price") is the successful bid amount set forth in the Report of Auction.

- (a) **Bid Deposit.** Purchaser has made a bid deposit or furnished a bid bond guarantee in the amount set forth in the Report of Auction. If a bid bond guarantee was substituted for a bid deposit, Purchaser shall pay the cash equivalent of the bid guarantee amount to the State within **10** days of the auction date. In the event Purchaser fails, without legal excuse, to complete the purchase of the Property, the deposit made by Purchaser shall be forfeited to State in an amount not to exceed five percent (5%) of the Purchase Price as the sole and exclusive remedy available to State for such failure.
- (b) **Balance.** The balance of the Purchase Price and all costs, assessments, prorations, charges or fees due under this Agreement shall be paid in cash no later than ten (10) days after the date of the agreement.

**2.2. No Interest.** The bid deposit and Balance paid shall be held by the State Treasurer without

interest until Closing.

**2.3 Administrative Costs.** In addition to the Purchase Price, Purchaser shall pay to State in cash the amount of SEVEN THOUSAND U.S. Dollars (\$7,000) within ten (10) days of the auction date, if not previously paid to state, to reimburse State for costs associated with processing this sale including appraisal fees and other costs associated with preparing this transaction. This amount is not refundable regardless of any termination rights exercised under the Agreement. The amount shall be deemed earned by State upon execution of this Agreement.

### **SECTION 3 CLOSING**

**3.1 Date.** The "Closing Date," "Closing," or "Date of Closing," as those terms are used herein, shall mean the date upon which all monies are paid and all documents are recorded to complete the sale. Closing shall be as soon as practical for State to issue a quitclaim deed from the Governor's Office upon confirmation of the sale and confirmation that the Purchase Price has been paid to the State Treasury and all terms have been met.

**3.2 Place.** Closing shall be carried out at the Olympia office of the Department of Natural Resources. Purchaser acknowledges that State is acting as an interested party in preparing documentation for and closing this sale; State is not acting as an escrow. Purchaser should consult an attorney regarding the legal effects of this transaction.

### **SECTION 4 CONVEYANCE, TITLE INSURANCE AND POSSESSION**

**4.1 Possession.** Purchaser shall be entitled to possession of the Property on the Closing Date.

**4.2 Form of Deed.** State shall convey title to the Property to Purchaser by quitclaim deed executed by the Governor of the State of Washington. Said deed shall be in the same form and format as Exhibit B attached hereto and incorporated by this reference herein.

**4.3 Title Insurance.** State will not furnish a policy of title insurance at Closing. Purchaser must perform its due diligence with respect to title matters prior to the auction date. Satisfactory title shall not be a condition of closing.

### **SECTION 5 DESTRUCTION OR CONDEMNATION**

State shall bear the risk of loss until Closing. If on or before the Closing Date either the Property is materially damaged, or condemnation proceedings are commenced with respect to the Property, Purchaser shall elect either to terminate this Agreement or to purchase the Property. Purchaser must give written notice of such election to State within fifteen (15) days of Purchaser's knowledge of such damage or condemnation. Failure to give State notice of Purchaser's election to terminate shall be deemed an election to purchase. If Purchaser elects to terminate this Agreement, any deposit shall be returned to Purchaser, and all rights and obligations of Purchaser and State shall terminate. If Purchaser elects to purchase the Property, Purchaser shall be entitled to the insurance proceeds, if any, or to the condemnation award either of which shall be without adjustment to the Purchase Price. Damage shall be deemed "material" if it cannot be repaired or replaced within ninety (90) days or it represents more than ten percent (10%) of the Purchase Price.

## **SECTION 6 CONDITION OF THE PROPERTY**

**6.1 As Is.** The Property is sold "AS IS, WHERE IS." State does not make and specifically disclaims any warranties, express or implied, including any warranty of merchantability or fitness for a particular purpose about the Property, including but not limited to any improvements located thereon. No employee or agent of State is authorized to make any warranty or representation to the contrary. The foregoing specifically disclaims warranties with respect to the existence or nonexistence of any pollutants, contaminants, or hazardous waste or claims based thereon arising out of the actual or threatened discharge, disposal, seepage, migration, or escape of such substances at, from, or into the Property.

**6.2 Release/Indemnity.** Purchaser hereby fully releases State from any and all liability to Purchasers arising out of or related to the condition of the Property prior to, at, or after Closing, including but not limited to the deposit or release of hazardous or toxic wastes or material, pollutants, and the following known or suspected defects: It is the intent of the parties that this constitutes a full and final release of any and all claims concerning any substance including, but not limited to, hazardous substances. This release extends to and includes any action for contribution for any environmental remedial action. Purchaser agrees to indemnify, defend with counsel acceptable to State, and release State with respect to, but not limited to any claims, damages, liabilities, penalties (civil or criminal), and any other costs, including attorneys' fees and costs imposed or related to any hazardous, toxic, dangerous, or harmful substances on the Property deposited or released after Closing.

## **SECTION 7 ASSESSMENTS**

Purchaser shall buy the Property subject to any assessment remaining unpaid after the auction date.

## **SECTION 8 STATE CONTINGENCY**

State's obligations are contingent upon the following:

- (a) confirmation of sale by the Department as provided under RCW 79.11.175;
- (b) payment of all sums specified under this Agreement; and
- (c) performance on or prior to Closing of all other acts required of Purchaser under this Agreement.

## **SECTION 9 CLOSING AND CLOSING COSTS**

Prior to or at Closing the parties shall do the following:

### **9.1 State.**

- (a) issue a duly executed quitclaim deed conveying title to the Property within a reasonable time after confirmation of receipt of the Purchase Price by the State Treasury;

- (b) sign a Real Estate Excise Tax Affidavit;
- (c) assign state's rights as landlord to any lease(s) that may exist on the Property;
- (d) provide any other documents necessary to consummate this agreement; and
- (e) pay prorations to the extent required and determinable.

## **9.2 Purchaser.**

- (a) pay the Purchase Price into the State Treasury as set forth in Subsection 2.1;
- (b) sign a Real Estate Excise Tax Affidavit;
- (c) assume State's obligations under any lease(s) that may exist on the Property;
- (d) provide any other documents necessary to consummate this Agreement;
- (e) pay all administrative costs, other sums and prorations to the extent required under this Agreement and determinable; and
- (f) pay the cost of recording the deed and the county processing fee for filing the Real Estate Excise Tax Affidavit.

**9.3 Prorations.** All rents and other income, if any, and water, sewer, utility and maintenance charges and any other expenses (excluding local improvement assessment as provided under Section 7) with respect to the operation of the Property levied against the Property shall be prorated between Purchaser and State as of the Closing Date. To the extent information is then available, such prorations shall be calculated and paid as of Closing. Such prorations shall be adjusted and completed after the Closing Date, if necessary, as and when complete information becomes available, and State and Purchaser agree to cooperate and use their best efforts to complete such prorations not later than sixty (60) days after the Closing Date. No insurance proration shall be made.

## **SECTION 10 SURVIVAL**

The obligations not satisfied at Closing or intended to continue beyond Closing shall not be deemed to have merged in the deed.

## **SECTION 11 REAL ESTATE COMMISSION**

Purchaser shall pay any real estate commission payable in connection with this transaction. Any real estate agent or broker acting in this transaction shall be deemed to be the sole agent of Purchaser.

## **SECTION 12 NOTICES**

All notices required or permitted to be given hereunder shall be in writing and shall be deemed given upon personal service or deposit in the United States first class mail, postage prepaid, and addressed as follows:

To Purchaser: See Report of Auction

To State:

Department of Natural Resources  
Asset Management & Protection Division  
Attn: Pamela Plancich  
PO Box 47014  
Olympia, WA 98504-7014  
Facsimile: (360) 902-1789

The foregoing addresses may be changed by written notice.

### **SECTION 13 MISCELLANEOUS**

**13.1 Entire Agreement.** This Agreement constitutes the entire Agreement between the parties. No prior and contemporaneous negotiations, understandings and agreements, whether oral or written, are merged in these documents and the rights and obligations of the parties shall be as set forth herein.

**13.2 Binding Nature; Assignment of Rights.** All rights and obligations arising out of this Agreement shall inure to the benefit of and be binding upon the respective successors, heirs, assigns, administrators, executors and marital communities, if any, of the parties hereto. However, this Agreement shall not be assignable by Purchaser without the prior written consent and acceptance by State, which shall be at State's sole and absolute discretion.

**13.3 Washington Law.** This Agreement shall be construed, interpreted, and enforced pursuant to the laws of the state of Washington and venue shall be in Thurston County. The terms of this Agreement shall be given their ordinary meaning and shall not be construed in favor of or against either party hereto.

**13.4 Time of the Essence.** Time is of the essence in this Agreement. No waiver or consent to any breach or other default in the performance of any of the terms of this Agreement shall be deemed to constitute a waiver of any subsequent breach of the same or any other term or condition hereof. In the event time for performance falls on a weekend or legal holiday designated by the United States or Washington State, performance shall be deemed to be timely rendered if so rendered on the next business day.

**13.5 Captions.** The captions and section headings hereof are inserted for convenience purposes only and shall not be deemed to limit or expand the meaning of any section.

**13.6 Invalidity.** If any provisions of this Agreement shall be invalid, void or illegal, it shall in no way affect, impair or invalidate any of the other provisions hereof.

**13.7 Counterparts.** This Agreement may be signed in counterparts, any one of which shall be deemed an original.

**13.8 Date of Agreement.** The date of this Agreement shall be the date of the auction.

**13.9 Good Faith.** Both parties shall act reasonably and in good faith in order to consummate this transaction.

**13.10 Authorization.** Purchaser and the person(s) executing this Agreement on behalf of Purchaser represent and warrant that they are authorized to do so, that this is a legal, valid, and binding obligation on behalf of Purchaser, and that it is enforceable against Purchaser in accordance with its terms.

**13.11 Default.** In the event of default, neither party shall be liable for consequential damages.

**13.12 Attorneys' Fees and Costs.** If either party brings suit or submits to an alternative dispute process to interpret or enforce any provision of the agreement, the prevailing party shall be entitled to reasonable attorney fees, paralegal fees, accountant and other expert witness fees and all other fees, costs and expenses actually incurred in connection therewith, including those incurred on appeal, in addition to all other amounts provided by law, regardless of whether the matter proceeds to judgment or is resolved by the defaulting party curing the default.

Standard Agreement Approved  
as to Form on June 1, 2004  
by James Schwartz  
Assistant Attorney General  
State of Washington

**EXHIBIT A**  
**Legal Description**

**ROTH ROAD LAND SALE**

The following describes the State property to be transferred.

Lot 1 of Benton County Short Plat 2942, as recorded April 10, 2006 in Volume 1 of Short Plats at Page 2942, under Auditor's Fee number 2006-010997, Benton County Records, being a portion of the NE1/4 of the NE1/4 of Section 36, Township 11 North, Range 24 East, Willamette Meridian, Benton County, Washington,

Dennis J. Gelvin, PLS 21674  
Land Description & R/W Specialist  
State Land Survey Unit  
Engineering  
PO Box 47060  
Olympia, WA 98504-7060

Dated \_\_\_\_\_



## EXHIBIT B

### ROTHA ROAD LAND SALE

**AFTER RECORDING RETURN TO:**

Department of Natural Resources  
Asset Management & Protection Division  
PO Box 47014  
Olympia, WA 98504-7014

### QUITCLAIM DEED

#### Benton County

Grantor: State of Washington, acting by and through the Department of Natural Resources  
Grantee: Purchaser  
Abbreviated  
Legal Desc: Pnts of NE4 of Section 36, Township 11 North, Range 24 East  
Tax Parcel #: 136140000000000

THE GRANTOR, STATE OF WASHINGTON, acting by and through the Department of Natural Resources, for and in consideration of the sum of (USE UPPER CASE LETTERS FOR WRITTEN AMOUNT) Dollars (\$(#)), hereby conveys and quitclaims to (Grantee's Name) GRANTEE, all interest in the real property situated in Benton County, Washington, and described in Exhibit A, attached hereto, which by this reference is made a part hereof.

The above-described lands are subject to that certain statutory reserved right as set forth in RCW 79.11.210:

The Grantor hereby expressly saves, excepts, and reserves out of the grant hereby made, unto itself and its successors and assigns forever, all oils, gases, coal, ores, minerals, and fossils of every name, kind, or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, and fossils; and it also hereby expressly saves and reserves out of the grant hereby made, unto itself and its successors and assigns forever, the right to enter by itself or its agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, and working mines thereon, and taking out and removing therefrom all such oils, gases, coal, ores, minerals, and fossils, and to that end it further expressly reserves out

of the grant hereby made, unto itself, its successors and assigns, forever, the right by its or their agents, servants, and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, and railroads, sink such shafts, remove such soil, and to remain on said lands or any part thereof for the business of mining and to occupy as much of said lands as may be necessary or convenient for the successful prosecution of such mining business, hereby expressly reserving to itself and its successors and assigns, as aforesaid, generally, all rights and powers in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and the rights hereby expressly reserved.

No rights shall be exercised under the foregoing reservation, by the state or its successors or assigns, until provision has been made by the state or its successors or assigns, to pay to the owner of the land upon which the rights reserved herein to the state or its successors or assigns, are sought to be exercised, full payment for all damages sustained by said owner, by reason of entering upon said land: PROVIDED, That if said owner from any cause whatever refuses or neglects to settle said damages, then the state or its successors or assigns, or any applicant for a lease or contract from the state for the purpose of prospecting for or mining valuable minerals, or option contract, or lease, for mining coal, or lease for extracting petroleum or natural gas, shall have the right to institute such legal proceedings in the superior court of the county wherein the land is situate, as may be necessary to determine the damages which said owner of said land may suffer.

This Deed is executed and delivered pursuant to RCW 79.02.270.

WITNESS the Seal of the State of Washington, affixed this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
GOVERNOR

ATTEST: \_\_\_\_\_  
SECRETARY OF STATE

Approved as to form this \_\_\_\_\_ day  
of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Assistant Attorney General

State Deed No. (#)  
State Record of Deeds, Volume (#), Page (#).  
Transaction File No. 02-077864

## **EXHIBIT A TO QUITCLAIM DEED**

### **Legal Descriptions of Rotha Road Property**

The following describes the State land to be sold to (Grantee's name):

Dennis J. Gelvin, PLS 21674  
Land Description & R/W Specialist  
State Land Survey Unit  
Engineering Division  
PO Box 47060  
Olympia, WA 98504-7060

Dated\_\_\_\_\_